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HOUSE RESEARCH ORGANIZATION

daily floor report


Monday, July 15, 1991
The House convenes at 10 a.m.

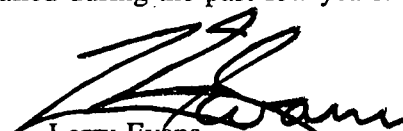
Pursuant to a proclamation issued by Gov. Ann Richards, the First Called Session of the 72nd Legislature convenes today. The governor is tentatively scheduled to address a joint session of the House and Senate at 11 a.m. today in the House Chamber.

The House Government Organization Committee is scheduled to meet today at 10:30 a.m. or upon adjournment in Room 104 of the John H. Reagan Bldg. for a hearing on the Insurance recommendations of the Texas Performance Review. The Senate Finance Committee is scheduled to meet at 7:30 p.m. today in the Senate Chamber to consider SB 2 by Parker, regulation of environmental, natural and energy resources.

Rep.-elect Brian McCall, R-Plano, won a special election in House District 60 on Saturday, July 13, to replace former state Rep. (now U.S. Rep.) Sam Johnson, R-Plano, who resigned following his election to Congress in May.

This edition of the Daily Floor Report reviews rules and procedures for special sessions and lists highlights of special sessions called during the past few years.


Anita Hill
Chairman
72-1-1


Larry Evans
Vice Chairman

SPECIAL SESSION RULES AND PROCEDURES

On July 3 Gov. Ann W. Richards issued a proclamation calling a special session of the Legislature to begin at 10 a.m. on Monday, July 15, 1991.

The governor's proclamation includes as the subject for consideration legislation providing for organizational and budgetary efficiency in state government, including legislation providing for consolidation of state agencies, reorganization of state programs and reductions in the cost of state government.

The governor may add other subjects for consideration at any point during the special session.

The Governor's Call

Once the regular legislative session, which may last no more than 140 days every two years, has adjourned *sine die*, the Legislature may meet in special session to consider legislation only when called by the governor. Art. 4, sec. 8, of the Texas Constitution gives the governor the power to call special sessions "on extraordinary occasions." The governor's proclamation calling the session (the "call") "shall state specifically the purpose for which the Legislature is convened."

The House and the Senate are authorized by law to convene themselves without being called by the governor only for the limited purpose of impeachment proceedings. Also, either house may meet informally at any time but may not transact legislative business. For example, on May 30, 1986 the members of the House met in the House Chamber at the request of Speaker Gib Lewis for a "briefing session" on the state's economic difficulties.

Art. 3, sec. 40, of the Constitution limits the Legislature to meeting in special session no more than 30 days. This means *calendar* days, not legislative days, so a special session that begins on Monday, July 15, must end by midnight on Tuesday, August 13.

The Constitution does not limit the number of special sessions that the governor may call. The six special sessions of the 71st Legislature called by Gov. Bill Clements in 1989-90 on workers' compensation (two sessions in 1989) and public education (four sessions in 1990) broke the previous record set by the

41st Legislature, which Gov. Dan Moody called into special session five times in 1929-30.

The 71st Legislature surpassed the modern record for total number of days in session by meeting 292 days in regular session and in six special sessions. The 43rd Legislature met in regular and four special sessions for a total of 263 days in 1933-34. (The all-time record for days in session is held by the 12th Legislature, which met a total of 353 days in four sessions in 1870-71 during the Reconstruction Era.)

The 71st Legislature also set a new record — 152 days — for total days in special session. The previous record was held by the 41st Legislature, which met in five special sessions for a total of 138 days in 1929-30.

Art. 3, sec. 40, states: "There shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them (the Legislature) by the Governor." The governor may at any time expand the special-session call to include additional topics. If the session does not produce the desired results, the governor may call additional sessions. Back-to-back sessions are allowed.

No advance notice of special sessions is required. For example, the brief special sessions on indigent health care in 1985 and on tort reform in 1987 convened the day after final adjournment of the regular session in those years, only a few hours after the governor had issued the call. The fifth called session of the 71st Legislature, which began on May 2, 1990, was called within hours of *sine die* adjournment of the fourth called session on May 1.

The Legislature need not meet for the entire 30 days of a special session and may adjourn *sine die* without completing action on any or all of the subjects designated by the governor. For example, the 38th Legislature, called into special session beginning March 15, 1923 by Gov. Pat M. Neff to act on a general appropriations bill and enforcement of the prohibition laws, met for only one hour, just long enough for both houses to convene and adjourn *sine die*. (The one-hour special session in 1923 and the third called session of the 71st Legislature in 1990 are the only special sessions in which no bills were enacted.)

Special-Session Subjects

Enrolled bill rule

Under current practice Texas courts decline to investigate whether a law enacted during a regular or special session had been properly considered by the Legislature. Under the enrolled bill rule, if a bill has been "enrolled," i.e. passed by both houses and signed by the governor, the courts do not consider whether any procedural rules were violated during the legislative process (*City of Houston v. Allred*, 71 S.W. 2d 251 (1934); *Maldonado v. State*, 473 S.W. 2d 26 (1971)).

In one early case, *Manor Casino v. State*, 34 S.W. 769 (1896), the Court of Civil Appeals had held that a law enacted during an 1888 special session was invalid because its subject had not been included in the governor's written proclamation and, therefore, the Legislature had no jurisdiction to enact the law. Subsequent approval of the bill by the governor did not grant the Legislature retroactive jurisdiction to enact the statute, the court said. However, in *Jackson v. Walker*, 49 S.W. 2d 693 (1932), the Texas Supreme Court found that the civil-appeals court decision had never been followed by other Texas appellate courts and held that it was not valid law. The court laid down the broad, absolute rule that an enrolled statute is conclusive proof that an act was passed as required by the Constitution and that the courts are not to examine the special-session proclamations of the governor or the House or Senate journals to invalidate the law.

It should be noted, however, that in a 1990 opinion, *Association of Texas Professional Educators, et al. v. Kirby*, 788 S.W. 2d 827, the Texas Supreme Court indicated that it is now willing to consider exceptions to the broad application of the enrolled bill rule. The court stated, "The enrolled bill rule is contrary to modern legal thinking, which does not favor conclusive presumptions that may produce results which do not accord with fact," and it noted that a majority of states now recognize exceptions to the rule.

The exception to the enrolled bill rule made by the court in its 1990 decision was narrow. The court said that when the official legislative journals, the presiding officers of both houses and the attorney general all concur that an enrolled bill signed by the governor is not the same as the bill passed by the Legislature, the court may find that the bill was not constitutionally enacted. The court invalidated HB 2566 (71st Legislature, regular session), making changes in

the teacher career-ladder system, because the effective date of one of the bill's provisions had been changed in the clerical process of preparing the bill for enrollment after it had passed both houses.

Limits on subject matter

The governor's call must set forth the "purpose for which the Legislature is convened." (Art. 4, sec. 8). The courts have held that the governor need not "state the details of legislation" (*Ex parte Fulton*, 215 S.W. 331 (1919)). In an 1886 case, the Texas Supreme Court ruled that the "subject" of a special session called to reduce taxes was in fact "the whole subject of taxation," so that a bill *raising* taxes also could be considered (*Baldwin v. State*, 3 S.W. 109).

The limitation in Art. 3, sec. 40, on the subject matter of legislation considered during the session may be enforced in two ways. The governor may veto any bill not included in the call. Also, any legislator may raise a point of order that legislation under consideration is not within the scope of a subject specified in the governor's call.

The limitation on subject matter considered during a special session is subject to interpretation by the presiding officer of each house. Rulings by Speaker Gib Lewis and Lt. Gov. Bill Hobby during recent special sessions indicate that the House and the Senate both usually take a broad view of the scope of the governor's call. For example, during the second called session of the 69th Legislature in 1986, Gov. Mark White had included within his call the subjects of cutting state spending and temporarily increasing the state sales-tax rate. Both presiding officers overruled points of order raised against consideration of a bill permitting pari-mutuel wagering on horse racing and greyhound racing, deciding that it was a measure enhancing state revenue and all measures dealing with "state finance" were open for consideration.

The 1985 version of the "Explanatory Notes" in the annotated edition of the House Rules included a strict interpretation:

In order to abide by the spirit of this section (Art. 3, sec. 40) it becomes imperative that a presiding officer, as well as individual legislators, strictly construe this provision. The rule should be rigidly adhered to in special sessions of the legislature, and points of order raised against bills on the ground that they do not come within the

purview of the governor's call or have not been specially submitted, should be uniformly sustained, where it clearly appears that the bill is subject to objection (page 117).

In editions of the annotated House Rules since 1985, the "Explanatory Notes" section includes a much broader directive on interpreting Art. 3, sec. 40:

Traditionally, it has been held that the legislature has broad discretion within the boundaries of the subjects submitted by the governor during a called session. The speaker is required to determine from time to time whether specific items of legislation are within the parameters of the subjects the governor has submitted. In making these determinations, the speaker is guided by the practice consistently followed by presiding officers of the house and permits the broadest possible latitude of legislative consideration within the limits of the constitution. Only with free and open consideration of all the issues raised by the subjects the governor has laid before the legislature can representative government function as the framers of our constitution intended (House Rules, 1991 edition, p. 132).

Although the constitutional provision governing the subject matter in the governor's special-session call has been construed broadly in recent years, it still places some limits on the legislation that may be considered. For example, during the fifth called session of the 71st Legislature in 1990, Speaker Lewis sustained points of order raised against bills providing for state limited banking associations, state savings banks, adding licensed drivers to the jury pool, refinancing county road district bonds, county land sales by sealed bid, indemnity provisions in mineral agreements and election of the Nolan County Hospital District board — all because they were not within the scope of subjects designated by the governor for consideration during the special session.

Referring legislation to committee

Several bills on subjects not within the governor's call have been reported from committee and passed by the House and Senate without objection during special sessions in recent years. Bills and resolutions on subjects not within the governor's call have been routinely read and referred to committee. However, several bills on subjects not within the call also have been reported from House committees and set on the daily calendar but later removed from consideration

when points of order were raised that the bills were not included in the governor's call.

House. The policy on first reading and referral to committee of legislation on subjects that are not within the governor's call has changed in recent years. Editions of the House Rules prior to 1987 had disapproved of the practice of referring to committee all legislation introduced, regardless of whether the subject was within the governor's call. The annotations said it was preferable that the speaker initially review all bills filed or sent from the Senate to determine whether they came within the governor's call. Bills not within the call would not be admitted to first reading and referred to committee. The annotation said this initial review procedure followed the "letter and spirit of the constitution," while the general referral procedure did not. It also noted that the initial review plan "protects both members of the legislature and the governor from needless and often unfair pressures."

The "Explanatory Note" dealing with special sessions in the annotated House Rules was changed, beginning with the 1987 edition, to reflect the practice of recent years. It approves the current practice of admitting to first reading all legislation introduced and referring it to committee, regardless of whether the subject falls within the governor's call. It notes that this practice "does not diminish the right of a member to later challenge a measure on the ground that it did not relate to a subject submitted by the governor." The current edition also notes that the general referral procedure can be advantageous because it activates the committee process, thereby expediting consideration of subjects that the governor may submit later (House Rules, 1991 edition, pp. 132-133).

Senate. The consistent position of the Senate president in special sessions has been that bills not within the governor's call may be introduced, referred, heard in committee and passed, unless a point of order is raised. During the second called session in 1989, however, Lt. Gov. Hobby delayed referring to committee bills on subjects other than the one (workers' compensation) specified in the governor's call because certain senators had indicated that they would raise a point of order against referral of bills clearly not within the call. In response to a parliamentary inquiry, Hobby said that the Constitution requires that such points of order be sustained.

Consideration of amendments to legislation

The broad interpretation of the scope of the governor's call also applies to amendments. In a precedent cited in the current edition of the annotated House rules (pages 133-135), Speaker Waggoner Carr determined that "it was not the intention of this section (Art. 3, sec. 40, of the Constitution) to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects . . . It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be."

Speaker Carr ruled that amendments to a bill under consideration did not have to be weighed against the standard set by Art. 3, sec. 40. As long as the amendment was germane to the bill, and the bill itself was within the scope of the call, the amendment would be permissible.

Resolutions

House Rule 11, sec. 7, states, "The subject matter of house resolutions and concurrent resolutions does not have to be submitted by the governor in a called session before they can be considered." This rule follows an attorney general's opinion (No. M-309 (1968)). However, the governor may veto concurrent resolutions.

Constitutional amendments, which are proposed by joint resolution, could not be considered during a special session until 1972. In that year the voters approved an amendment to Art. 17, sec. 1, allowing constitutional amendments to be considered "at any special session when the matter is included within the purposes for which the session is convened."

Since the governor does not have the power to veto joint resolutions (see the 1968 attorney general's opinion, No. M-309), she could not block a proposed constitutional amendment that was not within the call. Therefore, it is for the Legislature alone to decide whether a proposed constitutional amendment is within the scope of the governor's call.

Since adoption of the 1972 amendment, the House speaker generally has sustained points of order raised against proposed constitutional amendments when the subject matter is not within the scope of the governor's call.

Time Limits

Effective date

Art. 3, sec. 39, of the Constitution states that a bill passed by the Legislature becomes effective 90 days after the adjournment of the session in which it is enacted. If a bill is declared an emergency and passes both the House and the Senate by a record vote of approval by two-thirds of all members, it can become effective immediately or in less than 90 days. For example, for a bill enacted during the first called session to take effect on or before September 1, it must be approved by at least 100 votes in the House and 21 votes in the Senate.

The 90-day effective date provision does *not* apply to general appropriation bills, which take effect immediately when signed by the governor or allowed to become law without being signed. As long as a general appropriations bill contains an emergency clause allowing it to take immediate effect, no special two-thirds majority is required, under Art. 3, sec. 39.

Time limit on submitting a constitutional amendment

Most proposed constitutional amendments are submitted for voter approval at the general election — the first Tuesday in November — but there is no requirement that the election be held on that day. The Legislature may set whatever election date it wishes, as long as it does not violate the timing requirements of Art. 17, sec. 1, of the Constitution. (For example, two proposed amendments have been submitted to the voters this year at an election to be held on August 10.)

Art. 17, sec. 1, of the Constitution requires a brief explanatory statement of the nature of any proposed constitutional amendment, along with the ballot description of the proposed amendment, to be published twice in each newspaper in the state that prints official notices. The first publication of that notice must be made 50 to 60 days before the date of the election. The Secretary of State's Office also requires some additional time to prepare the explanatory statement, which must also be approved by the attorney general, and to contract with the newspapers to publish the additional notice. (This has been done through the Texas Press Association in recent years).

Other Rules and Procedures

Bills may be prefiled 30 days before the start of a special session.

In recent special sessions the practice of the House Business Office has been to credit an additional \$33 to each House members' budget for office expenses for each day of a special session. This extra amount represents the pro rata share of the extra \$1,000 a month for members' budgets allowed by the Housekeeping Resolution (HR 23, regular session) for each month the Legislature is in session.

Members of the House and Senate and the lieutenant governor receive a per diem payment of \$30 for each day that the Legislature is in regular or special session, in addition to their monthly salary of \$600 (\$7,200 per year). A recent attorney general's opinion (DM-23, issued May 2) determined that the \$30 per diem that legislators receive when the Legislature is in session does not prohibit them from also claiming reimbursement for official expenses and mileage when the Legislature is in session on the same basis as when it is not in session.

RECENT LEGISLATIVE SESSIONS

63rd Legislature: 1973-1975

Regular session: January 9 - May 28, 1973

1st special session: December 18-20, 1973
• lowering highway speed limits

Constitutional Convention: January 8 - July 30, 1974

(The members of the 63rd Legislature met as delegates to the constitutional convention)

64th Legislature: 1975-1977

Regular session: January 14 - June 2, 1975

Impeachment proceedings against Dist. Judge O. P. Carrillo —
House: August 4-5, 1975

Senate: September 3, 1975 - January 23, 1976

65th Legislature: 1977-1979

Regular session: January 11 - May 30, 1977

1st special session: July 11-21, 1977
• public education funding
• nursing home regulation

2nd special session: July 10 - August 8, 1978
• limits on taxation and spending

66th Legislature: 1979-1981

Regular session: January 9 - May 28, 1979

67th Legislature:	1981-1983
Regular session:	January 13 - June 1, 1981
1st special session:	July 13 - August 11, 1981 <ul style="list-style-type: none"> • repeal of state property tax • water trust fund • congressional redistricting • revision of Property Tax Code • Medical Practices Act sunset
2nd special session:	May 24-28, 1982 <ul style="list-style-type: none"> • repeal of state property tax • appropriations for university construction and prisons
3rd special session:	September 7-9, 1982 <ul style="list-style-type: none"> • unemployment compensation fund
68th Legislature:	1983-1985
Regular session:	January 11 - May 30, 1983
1st special session:	June 22-25, 1983 <ul style="list-style-type: none"> • Texas Employment Commission sunset • brucellosis control • Human Rights Commission
2nd special session:	June 4-July 3, 1984 <ul style="list-style-type: none"> • public education (HB 72) • revenue measures • state highway finance • workers' compensation for farm workers • child safety seats
69th Legislature:	1985-1987
Regular session:	January 8 - May 27, 1985

69th Legislature (cont.):

- 1st special session: May 28-30, 1985
• indigent health care
- 2nd special session: August 6 - September 4, 1986
• state budget reduction
• temporary tax increase
• interstate and branch banking
- 3rd special session: September 8-30, 1986
• state budget reduction
• temporary tax increase
• presidential primary

70th Legislature: 1987-1989

- Regular session: January 13 - June 1, 1987
- 1st special session: June 2-3, 1987
• tort reform
- 2nd special session: June 22 - July 21, 1987
• general appropriations bill
• revenue measures
• budget execution authority
• Texas Growth Fund; state fund investment

71st Legislature: 1989-91

- Regular session: January 10 - May 29, 1989
- 1st special session: June 20-July 19, 1989
• workers' compensation
• UT-Dallas four-year status
• Medicare supplement insurance
- 2nd special session: November 14 - December 12, 1989
• workers' compensation

71st Legislature (cont.):

- 3rd special session: February 27 - March 28, 1990
- school finance
 - judicial selection
- 4th special session: April 2 - May 1, 1990
- school finance
 - judicial selection
- 5th special session: May 2-30, 1990
- school finance
 - social service agency appropriations
 - gubernatorial appointee confirmation deadlines
- 6th special session: June 4-7, 1990
- school finance
 - social service agency appropriations
 - gubernatorial appointee confirmation deadlines
 - prison expansion

72nd Legislature: 1991-93

- Regular session: January 8 - May 27, 1991
- 1st special session: July 15 - ????, 1991
- reorganization of state government
 - general appropriations bill (tentative)
 - congressional and State Board of Education redistricting (tentative)